

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| RONALD SHAMON and PATRICIA SHAMON, Plaintiffs, |) | |
| |) | |
| v. |) | Docket No. 04cv11674-WGY |
| |) | |
| UNITED STATES OF AMERICA, Defendant. |) | |
| |) | |

**UNITED STATES OF AMERICA'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant, the United States of America, in the above-captioned action respectfully moves for leave to file a brief supplemental memorandum in support of its Motion for Partial Summary Judgment regarding Plaintiff Patricia Shamon's loss of consortium claim. While the United States believes that the argument presented in its Motion for Partial Summary Judgment is still valid, it has come to the government's attention that Mrs. Shamon's claim under the Federal Torts Claims Act ("FTCA") also is jurisdictionally barred because she failed to file a timely administrative claim with the Department of Veteran Affairs. Accordingly, the Court lacks subject matter jurisdiction over Mrs. Shamon's claim. This fact did not become clear to the government until after it deposed Mrs. Shamon and recently received Plaintiffs' full responses to the government's document requests. Because the administrative claim requirements under the FTCA are jurisdictional in nature and cannot be waived; see, e.g., Skwira v. United States, 344 F.3d 64, 71 (1st Cir. 2003);

28 U.S.C. § 2401(b); 28 U.S.C. § 2675(a); 28 C.F.R. § 14.2; the governments respectfully submits this brief supplemental memorandum, which sets forth this issue to the Court.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ Damian W. Wilmot
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Dated: June 2, 2005

CERTIFICATION UNDER L.R. 7.1

Counsel have conferred pursuant to L.R. 7.1(A)(2), and Plaintiff's counsel has no objection to the Defendant's filing of this Supplemental Memorandum.

/s/ Damian W. Wilmot
DAMIAN W. WILMOT
Assistant U.S. Attorney